

1 waste site, along with a table indicating the parameters to be monitored for and the
2 frequency of monitoring before and during mining waste site development.

3 7. A long-term care plan sheet showing the completion of closure and
4 indicating those items anticipated to be performed during the period of long-term
5 care for the mining waste site, along with a discussion of the procedures to be used
6 for the inspection and maintenance of runoff control structures, settlement, erosion
7 damage, leachate control facilities, and leachate and groundwater monitoring and
8 a table listing those items and the anticipated schedule for monitoring and
9 maintenance.

10 8. If applicable, the following information on the plan sheets under subds. 1.
11 to 7.:

- 12 a. A survey grid with baselines and monuments to be used for field control.
- 13 b. Limits of filling for each major mining waste type or fill area.
- 14 c. All drainage patterns and surface water drainage control structures both
15 within the actual fill area and at the perimeter of the mining waste site, including
16 any berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets,
17 velocity breaks, sodding, erosion matting, vegetation, or other methods of erosion
18 control.
- 19 d. The method of placing mining waste within each phase.
- 20 e. Ground surface contours at the time represented by the drawing, indicating
21 spot elevations for key features.
- 22 f. Areas to be cleared, grubbed, and stripped of topsoil.
- 23 g. Borrow areas for liner materials, granular materials for filter beds, berms,
24 roadway construction, and cover materials.

1 h. All soil stockpiles, including soils to be used for cover, topsoil, liner materials,
2 filter bed materials, and other excavation.

3 i. Access roads and traffic flow patterns to and within the active fill area.

4 j. All temporary and permanent fencing.

5 k. The methods of screening such as berms, vegetation, or special fencing.

6 L. Leachate collection, control, and treatment systems, including any pipes,
7 manholes, trenches, berms, collection sumps or basins, pumps, risers, liners, and
8 liner splices.

9 m. Leachate and groundwater monitoring devices and systems.

10 n. Disposal areas for severe weather operations.

11 o. Support buildings, utilities, gates, and signs.

12 p. Handling areas for the segregation of various types of mining waste.

13 q. Construction notes and references to details.

14 r. On the appropriate plan sheet, the location of each cross-section under subd.
15 9., with the section labeled using the mining waste site grid system.

16 9. A series of mining waste site cross-sections, drawn perpendicular and
17 parallel to the mining waste site baseline at a maximum distance of 500 feet between
18 cross-sections and at points of important construction features, each cross-section
19 showing, where applicable: existing and proposed base and final grades; soil borings
20 and monitoring wells that the section passes through or is adjacent to; soil types,
21 bedrock, and water table; leachate control, collection, and monitoring systems;
22 quantity of mining waste and area filled by each major mining waste type; drainage
23 control structures; access roads and ramps on the mining waste site perimeter and
24 within the active fill area; the filling sequence or phases; and other appropriate site
25 features.

1 10. Drawings and typical sections for, as appropriate, drainage control
2 structures, tailings distribution systems, access roads, fencing, leachate control
3 systems and monitoring devices, buildings, signs, and other construction details.

4 (b) A plan for initial site preparations, including a discussion of the field
5 measurements, photographs to be taken, and sampling and testing procedures to be
6 used to verify that the in-field conditions encountered were the same as those
7 defined in the mining waste site feasibility study and plan of operation and to
8 document that the mining waste site was constructed according to the engineering
9 plans and specifications submitted for department approval.

10 (c) A description of typical daily operations, including a discussion of the
11 timetable for development; methods for determining mining waste types disposed of
12 or excluded; typical mining waste handling techniques; hours of operation; traffic
13 routing; drainage and erosion control; windy, wet, and cold weather operations; fire
14 protection equipment; methods for dust control; method of placing mining waste
15 materials; monitoring; closure of filled areas; leachate control methods; and critical
16 backup equipment.

17 (d) An analysis of the financial responsibility for closure and long-term care
18 from the time of closing of the mining waste site to termination of the obligation to
19 maintain proof of financial responsibility for long-term care.

20 (e) A description of procedures for backfilling all soil borings and monitoring
21 wells when they are abandoned.

22 (f) A contingency plan to prevent or minimize damage to human health or the
23 environment in the event of an accidental or emergency discharge or other condition
24 that does not comply with conditions of the mining permit or other applicable
25 standards. The applicant shall ensure that the plan does all of the following:

1 1. Follows the spill prevention, control, and countermeasures plan in
2 regulations promulgated under 33 USC 1321.

3 2. Indicates, for the monitoring programs required under sub. (5) (o) 8., the
4 levels of substances that if exceeded require the operator to activate the contingency
5 plan.

6 3. Includes a provision for more concentrated and frequent monitoring in the
7 area of any excessive measurement.

8 4. Describes possible accidental or emergency discharges or other unplanned
9 events and identifies the corresponding corrective action or alternative action to be
10 implemented should the criteria for action be exceeded.

11 5. Specifies the action to be taken if an analysis of groundwater samples
12 requires a response.

13 (g) A list of the groundwater and surface water quality parameters for which
14 the applicant will monitor under s. 295.643 and a description of the methods for
15 groundwater and surface water sample collection, preservation, and analysis that
16 will be used.

17 **(7) REQUIRED DEMONSTRATIONS.** Through the mining waste site feasibility study
18 and plan of operation, the applicant shall demonstrate that all of the following apply
19 or will apply with respect to the operation of the mining waste site, excluding the area
20 from which ferrous minerals will be extracted and that is backfilled with mining
21 waste:

22 (a) No mining waste will be deposited in such a way that the mining waste or
23 leachate from the mining waste will result in a violation of any applicable surface
24 water quality criteria or standards, applicable wetland water quality standards, or
25 applicable groundwater quality standards.

1 (b) Surface water drainage will be diverted away from and off the active fill
2 area.

3 (c) Access to the mining waste site will be restricted through the use of fencing,
4 natural barriers, or other methods approved by the department.

5 (d) The entire perimeter of the mining waste site will be made accessible for
6 inspection and for earth moving equipment required for emergency maintenance.

7 (e) Any area to be used for the disposal of mining waste and any borrow areas
8 will first be stripped of all topsoil to ensure that adequate amounts are available for
9 reclamation and closure activities.

10 (f) Effective means will be taken to control dust resulting from the mining
11 waste site.

12 (g) Provisions will be made for back-up equipment in the event of the
13 breakdown of critical operating equipment.

14 (h) The design and operation specifications for mining waste site facilities
15 include contingency measures, which may include emergency power supplies,
16 redundant equipment, or temporary holding facilities, to deal with emergency
17 conditions.

18 (hm) Any mining waste site designed with a liner or situated in soils with
19 sufficiently low permeability to either partially or completely contain leachate is
20 designed with a leachate management system that can effectively remove leachate,
21 prevent surface seepage, and promote adequate settlement to permit final
22 reclamation.

23 (i) All surface water drainage ditches, culverts, and other drainage control
24 structures are designed for a rainfall event measured in terms of the depth of the

1 rainfall occurring within a 24-hour period and having an expected recurrence
2 interval of once in 100 years.

3 (j) The final slopes of the completed mining waste site will be no less than 2
4 percent and no greater than 50 percent, unless the mining waste site is specifically
5 designed for a final use compatible with other slopes.

6 (k) The final cover design for the mining waste site is based on the results of
7 the mining waste characterization and engineering needs identified in studying the
8 mining waste site feasibility.

9 (L) Provisions are made for collection and treatment of leachate for all areas
10 designed to contain leachate.

11 (m) The mining waste site is located and designed, and will be constructed and
12 operated, so that any liner system or naturally occurring soil barrier is compatible
13 with all mining waste that is disposed of or stored in the mining waste site.

14 (n) For any dam, sufficient freeboard, measured from the inside of the top of
15 the dam, to contain a rainfall event measured in terms of the depth of the rainfall
16 occurring within a 24-hour period and having an expected recurrence interval of
17 once in 100 years and to prevent overtopping by waves during such a rainfall event
18 or a minimum of 2 feet of freeboard, whichever is greater, will be provided.

19 (o) Drainage or filter bed material has been selected and designed to promote
20 drainage, reduce the potential for piping, and be stable under leaching conditions.

21 (p) Material used in earth embankments, drainage, or filter beds, will be free
22 of vegetation, organic soils, frozen soils, and other extraneous matter that could
23 affect the compactibility, density, permeability, or shear strength of the finished
24 embankment.

1 (q) Embankment materials and drainage or filter bed materials will be
2 compacted to 90 percent of the maximum dry density as determined by the standard
3 proctor compaction test, ASTM D698, or to a greater density as necessitated by the
4 embankment height, and the materials will be compacted in appropriate layers as
5 determined through the slope stability analysis, except that compaction and
6 crushing of waste rock for use outside an earth core is not required.

7 (r) Emergency spill containment areas will be provided near the tailings
8 pipeline in case of power or pipeline failure.

9 (s) Tailings pipelines will be self-draining to the tailings area or to an
10 emergency spill containment area.

11 (t) The mining waste site is located in the same watershed as the surface
12 facilities for the mining unless it is not practicable to locate the mining waste site in
13 the same watershed as the surface facilities for the mining, as determined on a site
14 specific basis.

15 (u) The disposal of the mining waste will minimize the discharge of
16 environmental pollutants to groundwater to the extent practicable.

17 (w) Tailings pipelines are as short as practicable.

18 (x) Upstream rainfall catchment areas are minimized.

19 (y) The outside of the top of any dam is higher than the inside of the top of the
20 dam so that runoff from the top is forced to the inside of the dam.

21 (z) The mining waste site design includes staged reclamation, if practicable.

22 **(8) LIMITATION ON REGULATION OF CERTAIN MINING WASTE.** The department may
23 not regulate the use of mining waste in reclamation or the construction of any facility
24 or structure except through the department's review of the mining plan and
25 reclamation plan and the approval of the application for the mining permit.

1 **(9) APPLICABILITY OF OTHER LAWS.** Subchapters I to V and VIII of ch. 289 and
2 rules promulgated under those subchapters do not apply to a mining waste site, to
3 the disposal of mining waste in a mining waste site, or to mining wastes used in the
4 reclamation or construction of facilities and structures on the mining site.

5 **295.53 Environmental impact statement.** **(1) CONSULTANTS.** The
6 department may enter into contracts for environmental consultant services under
7 s. 23.41 to assist in the preparation of an environmental impact statement or to
8 provide assistance to applicants.

9 **(2) NOTICE.** After the department receives an application for a mining permit,
10 it shall notify the public and affected agencies that an environmental impact
11 statement will be prepared for the proposed mine and that the process of identifying
12 major issues under s. NR 150.21 (3), Wis. Adm. Code, is beginning.

13 **(3) ENVIRONMENTAL IMPACT REPORT.** (a) An applicant shall prepare an
14 environmental impact report for the mining project. In the environmental impact
15 report, the applicant shall provide a description of the proposed mining project, the
16 present environmental conditions in the area and the anticipated environmental
17 impacts of the proposed mining project, the present socioeconomic conditions in the
18 area and the anticipated socioeconomic impacts of the proposed mining project,
19 details of any wetlands mitigation program under s. 295.60 (8), any measures for
20 navigable waters under s. 295.605 (4), any proposed changes to the forest
21 designations specified in sub. (4) (c), and the alternatives to the proposed mining
22 project. As the applicant provides more information or makes modifications to the
23 proposed mining project, the department may revise the requirements it specified
24 under s. 295.465 (1) (b) to ensure the potential environmental effects can be
25 identified in the department's environmental impact statement.

1 (b) The department shall assist the applicant in meeting the deadlines for
2 ultimate submission and review of those analyses consistent with this subchapter.
3 If a particular scientific analysis is not completed as of the date the environmental
4 impact report is required to be submitted, the applicant shall identify in the
5 environmental impact report the scope of the analysis and anticipated date that it
6 will be submitted.

7 (c) 1. The applicant shall submit the environmental impact report with the
8 application for the mining permit.

9 3. Upon receipt of the environmental impact report, the department shall
10 review the environmental impact report and, if the department finds that the
11 environmental impact report does not contain information reasonably necessary for
12 the department to evaluate the proposed mining project and its environmental
13 effects, the department may request additional information from the applicant.

14 (d) The department shall accept original data from an environmental impact
15 report for use in the environmental impact statement and need not verify all original
16 data provided by the applicant to accept the data as accurate. The department shall
17 use original data from an environmental impact report in the environmental impact
18 statement if the data contains the information identified under s. 295.465 (1) (b) and
19 any of the following conditions is met:

20 1. The department, its consultant, or a cooperating state or federal agency
21 collects sufficient data to perform a limited statistical comparison with data from the
22 environmental impact report that demonstrates that the data sets are statistically
23 similar within a reasonable confidence limit.

1 2. An expert who is employed by, or is a consultant to, the department or is
2 employed by, or is a consultant to, a cooperating state or federal agency determines
3 that the data is within the range of expected results.

4 3. The department, its consultant or a cooperating state or federal agency
5 determines that the methodology used in the environmental impact report is
6 scientifically and technically adequate for the tests being performed.

7 **(4) PROCEDURE FOR ENVIRONMENTAL IMPACT STATEMENT.** (a) The department shall
8 prepare an environmental impact statement for every application for a mining
9 permit. In preparing the environmental impact statement, the department shall
10 comply with s. 1.11 (2) and s. NR 150.22 (2), Wis. Adm. Code.

11 (b) The department shall include in the environmental impact statement a
12 description of the significant long-term and short-term impacts, including impacts
13 after the mining has ended, on all of the following:

- 14 1. Tourism.
- 15 2. Employment.
- 16 3. Schools and medical care facilities.
- 17 4. Private and public social services.
- 18 5. The tax base.
- 19 6. The local economy.

20 (c) The department and other state agencies shall address the application for
21 a mining permit, for any approval, and for any action relating to the mining project
22 involving other state agencies in one comprehensive analysis in the environmental
23 impact statement prepared by the department, including any environmental
24 analysis required by the department with regard to any of the following:

1 1. The withdrawal of land entered as county forest land under s. 28.11 and any
2 modification of, or amendment to, a county forest land use plan necessitated by the
3 withdrawal of the land.

4 2. The withdrawal of land entered as forest cropland under s. 77.10.

5 3. The withdrawal of land designated as managed forest land under subch. VI
6 of ch. 77 and any modification of, or amendment to, a managed forest land
7 management plan necessitated by the withdrawal of the land.

8 4. The transfer of land for which amounts were awarded by the department,
9 including under s. 23.09 (17m), 26.38, 28.11 (5r), or 77.895, to fund the acquisition
10 of, or to fund activities conducted on, forest land and any modification of, or
11 amendment to, a forest stewardship management plan or other plan necessitated by
12 the transfer of the land.

13 (d) The public notice, informational hearing, and comment provisions in s.
14 295.57, the provision concerning the effective date of approvals in s. 295.58 (6), and
15 the provisions for review in s. 295.77 apply to an environmental impact statement
16 prepared under this subsection. If the department revises and redistributes an
17 environmental impact statement or portion of an environmental impact statement
18 prepared under this section, the department shall distribute the environmental
19 impact statement or portion of the environmental impact statement as provided in
20 s. 295.57, but the period for public comment is 30 days, rather than 45 days.

21 (e) The department shall conduct its environmental review process jointly with
22 any federal or local agency that consents to a joint environmental review process.
23 The department may adopt any environmental analysis prepared by another state
24 agency or by a federal or local agency. The department may enter into a written
25 agreement with any of those agencies that have a major responsibility related to or

1 that are significantly affected by the proposed mining. In the written agreement, the
2 parties shall define the responsibility of each agency in the development of a single
3 environmental impact statement on the proposed mining and outline the procedures
4 to be used in the regulatory process. The department shall be the lead agency for any
5 environmental review process involving other state agencies. To the extent that any
6 federal or local agency's environmental review process conflicts with the provisions
7 of this section or s. 295.57, then the department shall follow the provisions of this
8 section and s. 295.57 and may only coordinate its environmental review to the extent
9 consistent with the provisions of this section and s. 295.57. The department shall
10 comment on any federal agency's environmental assessment or environmental
11 impact statement associated with a mining project in accordance with s. NR 150.30,
12 Wis. Adm. Code.

13 (5) RELATIONSHIP TO OTHER LAWS. This section and s. 295.57 govern the
14 department's obligations under ss. 1.11 and 1.12 with respect to a mining project.
15 Sections 23.11 (5) and 23.40 and ss. NR 2.085, 2.09, and 2.157, Wis. Adm. Code, do
16 not apply with respect to a mining project. The rest of ch. NR 2, Wis. Adm. Code, only
17 applies with respect to a mining project to the extent that it does not conflict with this
18 section and s. 295.57. Sections NR 150.24 and 150.25, Wis. Adm. Code, do not apply
19 with respect to a mining project. The rest of ch. 150, Wis. Adm. Code, only applies
20 with respect to a mining project to the extent that it does not conflict with this section
21 and s. 295.57.

22 **295.56 Exemptions.** (1) The department may grant an exemption, as
23 provided in this section, from any of the requirements of this subchapter applicable
24 to any of the following:

1 (a) A mining permit application, including the mining plan, reclamation plan,
2 and mining waste site feasibility study and plan of operation.

3 (b) A mining permit.

4 (c) Any other approval.

5 (2) (a) An applicant shall submit a request for an exemption in writing and
6 shall describe the grounds for the exemption and provide documentation identifying
7 the conditions requiring the exemption, the reasons for the exemption, and the
8 reasonableness of the exemption.

9 (b) An applicant may obtain an exemption only if the applicant submits the
10 request no later than the 180th day after the application for the mining permit is
11 administratively complete under s. 295.57 (2), unless the condition that is the basis
12 for the requested exemption is not known to the applicant before that day, in which
13 case the deadline is extended to the 20th day before the deadline under s. 295.57 (7)
14 (a).

15 (c) The department shall issue a decision on a request for an exemption no later
16 than the 15th day after the day on which it received the request under par. (a).
17 Subject to par. (b) and except as provided in par. (d), the department shall grant the
18 exemption if it is consistent with the purposes of this subchapter and will not violate
19 any applicable environmental law outside of this subchapter and if one of the
20 following applies:

- 21 1. The exemption will not result in significant adverse environmental impacts.
- 22 2. The exemption will result in significant adverse environmental impacts, but
23 the applicant will offset those impacts through mitigation, as provided in s. 295.60,
24 through the measures provided in s. 295.605, or through the conservation measures
25 provided in s. 295.61.

1 (d) 1. The department shall deny a request for an exemption if granting the
2 exemption would violate federal law.

3 2. If federal law imposes a standard for an exemption that differs from the
4 standard in par. (c) and that cannot be modified by state law, and if that standard has
5 been approved by the federal government for use by the state through a delegation
6 agreement, federally approved state implementation plan, or other program
7 approval, then the department shall determine whether to grant the request for the
8 exemption using the federal standard.

9 **295.57 Application procedure. (1) SUBMISSION.** (a) An applicant shall
10 submit the application for a mining permit as provided in s. 295.47.

11 (b) The department and the state geologist shall protect as confidential any
12 information, other than effluent data, contained in an application for a mining
13 permit, upon a showing that the information is entitled to protection as a trade
14 secret, as defined in s. 134.90 (1) (c), and any information relating to production or
15 sales figures or to processes or production unique to the applicant or that would tend
16 to adversely affect the competitive position of the applicant if made public.

17 **(2) DETERMINATION OF ADMINISTRATIVE COMPLETENESS.** (a) The department shall
18 review an application for a mining permit and, within 30 days after the application
19 is submitted, shall determine either that the application is complete or that
20 additional information is needed. If the department determines that the application
21 is complete, the department shall notify the applicant in writing of that fact within
22 the 30-day period and the date on which the department sends the notice is the day
23 on which the application is administratively complete.

24 (b) If the department determines under par. (a) that an application is
25 incomplete, the department shall notify the applicant in writing and may make one

1 request for additional information during the 30-day period specified in par. (a).
2 Within 10 days after receiving additional requested information from the applicant,
3 the department shall notify the applicant in writing as to whether it has received all
4 of the requested information. The day on which the department sends the 2nd notice
5 under this paragraph is the day on which the application is administratively
6 complete.

7 (c) If the department fails to meet the 30-day time limit under par. (a) or the
8 10-day time limit under par. (b), the application is administratively complete on the
9 last day of the 30-day time limit or 10-day time limit.

10 (d) The department may request additional information needed to process a
11 mining application from the applicant after the application is administratively
12 complete, but the department may not delay the determination of administrative
13 completeness based on a request for additional information.

14 **(3) NOTICE OF ADDITIONAL APPROVALS.** Within 30 days after the mining permit
15 is administratively complete under sub. (2), the department shall notify the
16 applicant in writing of any approval required for the construction or operation of the
17 mining site that was not previously identified by the department.

18 **(3m) RECEIPT OF CERTAIN APPROVALS.** If a storm water discharge permit under
19 s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch.
20 II of ch. 281 to implement 33 USC 1341 (a) is needed for a mining operation, the
21 person applying for the mining permit may apply for and be issued the permit or
22 certification.

23 **(4) PUBLIC INFORMATION AND NOTICE.** (a) The department shall make available
24 for review in the city, village, or town in which the proposed mining site is located,
25 information concerning the proposed mining, including all of the following:

1 1. The application for the mining permit, including the mining plan,
2 reclamation plan, and mining waste site feasibility study and plan of operation.

3 2. Any of the following relating to an approval other than the mining permit:

4 a. The application.

5 b. A draft approval.

6 c. Information or summaries relating to the approval.

7 3. The environmental impact statement, environmental impact report, and any
8 additional supporting information used in the department's evaluation of the
9 proposed mining.

10 4. The department's analyses and preliminary determinations relating to any
11 approval.

12 (b) The department shall distribute a notice that describes the availability of
13 the information under par. (a); the opportunity for written public comment, including
14 an invitation for the submission of written comments by any person within 45 days
15 after the notice is published; and the date, time, and location of the public
16 informational hearing and that includes any additional information that a law
17 concerning any approval requires to be provided. The department shall publish the
18 notice as a Class I notice under ch. 985. The department shall also send the notice
19 to all of the following:

20 1. The clerk of any city, village, town, or county with zoning jurisdiction over
21 the proposed mining site.

22 2. The clerk of any city, village, town, or county within whose boundaries any
23 portion of the proposed mining site is located.

24 3. The clerk of any city, village, or town, contiguous to any city, village, or town
25 within whose boundaries any portion of the proposed mining site is located.

1 4. The main public library of each city, village, town, or county with zoning
2 jurisdiction over the proposed mining site or within whose boundaries any portion
3 of the proposed mining site is located.

4 5. Any regional planning commission for the area within which the proposed
5 mining site lies.

6 6. Any state agency that the department knows is required to grant a permit
7 or other authorization necessary for the construction or operation of the proposed
8 mining project.

9 7. The federal environmental protection agency, U.S. Army Corps of Engineers,
10 and states potentially affected by the proposed discharge if a water discharge permit
11 under ch. 283 or a water quality certification for a federal wetland under s. 295.60
12 (4) is to be considered at the public informational hearing.

13 8. The federal environmental protection agency and appropriate agencies in
14 other states that may be affected if an air pollution control permit under ch. 285 is
15 to be considered at the public informational hearing.

16 9. If a water withdrawal permit under s. 295.61 for a withdrawal of surface
17 water is to be considered at the public informational hearing, the persons specified
18 in s. 30.18 (4) (a).

19 10. If an individual permit under s. 30.12 for a structure through which water
20 transferred from the Great Lakes basin would be returned to the source watershed
21 through a stream tributary to one of the Great Lakes is to be considered at the public
22 informational hearing, the governing body of each city, village, and town through
23 which the stream flows or that is adjacent to the stream downstream from the point
24 at which the water would enter the stream.

25 11. Any person upon request.

1 12. The applicant.

2 13. Any other person to whom the department is required to give notice of any
3 proposed determination, application, or hearing concerning an approval under the
4 laws relating to the issuance of any approval or under s. 1.11.

5 (c) The department shall coordinate the public comment period for the mining
6 permit with the public comment period for any other approval for the mining
7 operation, except that if an application for an approval is filed too late to allow public
8 comment within the public comment period for the mining permit, the department
9 shall issue separate notice, as described in par. (b), for the approval after the
10 application is filed.

11 (5) INFORMATIONAL HEARING. The department shall hold a public informational
12 hearing before issuing or denying a mining permit and not less than 30 days after
13 publishing the notice under sub. (4) (b). The department shall hold the public
14 informational hearing in the county where the majority of the proposed mining site
15 is located. The department shall hold a single public informational hearing covering
16 the mining permit, all other approvals, and the environmental impact statement,
17 except that if an application for an approval is filed too late to allow the application
18 to be considered at the public informational hearing for the mining permit, the
19 department shall hold a separate public informational hearing on the approval in the
20 county where the proposed site is located not less than 30 days after publishing the
21 notice under sub. (4) (b) for the approval. The public informational hearing under
22 this subsection is not a contested case hearing under ch. 227. At the hearing, the
23 department shall take testimony on all of the following with regard to any proposed
24 withdrawal of groundwater or surface water:

1 (a) The public rights in any body of water and the related environment that may
2 be injured by the proposed withdrawal of groundwater or surface water.

3 (b) The public benefits provided by increased employment, economic activity,
4 and tax revenues from the proposed mining operation.

5 (c) The direct and indirect social and economic costs and benefits of the
6 proposed mining operation.

7 (d) Whether the proposed withdrawal of groundwater or surface water will
8 consume nonsurplus water.

9 (e) The rights of competing users of the groundwater or surface water.

10 (f) Any other water withdrawal issues identified by the department as relevant
11 to the decision of whether to issue or deny a permit.

12 **(6) SUMMARY.** After considering the comments received under subs. (4) and (5)
13 and before acting on the application for the mining permit, the department shall
14 prepare a summary of the comments and the department's response to the
15 comments.

16 **(7) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION.** (a) No more than 420
17 days after the day on which the application for a mining permit is administratively
18 complete under sub. (2), the department shall approve the application, and issue a
19 mining permit, or deny the application, in accordance with s. 295.58, unless the
20 department and the applicant agree to extend the deadline. The department and the
21 applicant may agree to not more than one extension and that extension may not
22 exceed 60 days. The department and the applicant may enter into an extension only
23 if one of the following applies:

24 1. An extension is necessary to enable the department and the U.S. Army Corps
25 of Engineers to jointly prepare their environmental impact statements.

1 2. New information or a change to the mining proposal necessitates additional
2 time to review the application.

3 (b) If the department does not comply with the deadline under par. (a),
4 including any extension agreed to by the applicant, the department shall refund the
5 fees under s. 295.73 (3) (a) and (d) that were paid by the applicant.

6 (c) If the department does not comply with the deadline under par. (a),
7 including any extension agreed to by the applicant, the applicant may bring an action
8 for mandamus to compel the department to approve or deny the application.
9 Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall
10 award the applicant its costs, including reasonable attorney fees, if it determines
11 that the department did not comply with the deadline under par. (a).

12 (8) DEADLINE FOR ACTING ON OTHER APPROVALS. (a) Except as provided in par.
13 (c), if an applicant files an application for an approval other than a mining permit
14 no later than 60 days after the day on which the application for the mining permit
15 is administratively complete under sub. (2), the department shall approve the
16 application, and issue the approval or deny the application no later than the deadline
17 under sub. (7) (a), including any extension agreed to by the applicant.

18 (b) Except as provided in par. (c) if an applicant files an application for an
19 approval other than a mining permit more than 60 days after the day on which the
20 application for the mining permit is administratively complete under sub. (2), the
21 deadline for acting on the application is extended beyond the deadline under sub. (7)
22 (a), including any extension agreed to by the applicant, by the number of days beyond
23 the 60th day after the day on which the application for the mining permit is
24 administratively complete that the applicant files the application for the approval.

1 (c) Paragraphs (a) and (b) do not apply to the application for an air pollution
2 control permit under s. 285.62.

3 (d) The department shall incorporate an approval other than a mining permit
4 into a single document with the mining permit, unless the application for the
5 approval was filed more than 60 days after the day on which the application for the
6 mining permit is administratively complete under sub. (2).

7 **(8m) SUBMISSION OF TECHNICAL REVIEW TO GREAT LAKES REGIONAL BODY.** If an
8 applicant files an application under s. 281.346 for an approval for a withdrawal of
9 surface water or groundwater that is subject to regional review or council approval,
10 the department shall provide its technical review, as defined in s. 281.346 (1) (u), to
11 the regional body, as defined in s. 281.346 (1) (q), no later than 90 days after the
12 applicant files the application for the approval.

13 **(9) APPLICABLE PROCEDURE.** The provisions of this section and ss. 295.58 (5) and
14 (6) and 295.77 concerning public notice, comment, and hearing; issuance of
15 department decisions; effective date of department decisions; and review of
16 department decisions; and the duration of approvals apply to any approval,
17 notwithstanding any provisions related to those matters in s. 44.40 or 169.25, subch.
18 I or VI of ch. 77, ch. 23, 29, 30, 169, 281, 283, 285, 289, or 291, or rules promulgated
19 under those provisions, except as provided in s. 281.343 (7r) and except that if a
20 withdrawal of surface water or groundwater is subject to regional review or council
21 approval under s. 281.346, the applicable provisions related to regional review or
22 council approval apply.

23 **295.58 Mining; department grant or denial of permit. (1) CRITERIA FOR**
24 **APPROVAL.** (a) Except as provided in sub. (2) and except with respect to property

1 specified in s. 41.41 (11), the department shall issue a mining permit if it finds all of
2 the following:

3 1. That the mining plan and reclamation plan are reasonably certain to result
4 in reclamation of the mining site consistent with this subchapter.

5 2. That the waste site feasibility study and plan of operation complies with s.
6 295.51.

7 3. That the applicant has committed to conducting the proposed mining in
8 compliance with the mining permit and any other approvals issued for the mining.

9 3m. That the proposed mining is likely to meet or exceed the regulations that
10 apply to municipal floodplain zoning ordinances contained in the uniform rules
11 promulgated by the department for preparation and implementation of municipal
12 floodplain zoning ordinances.

13 4. That the proposed mining is not likely to result in substantial adverse
14 impacts to public health, safety, or welfare.

15 5. That the proposed mining will result in a net positive economic impact in the
16 area reasonably expected to be most impacted by the mining.

17 6. That the applicant has applied for all necessary zoning approvals applicable
18 to the proposed mining.

19 (b) The department shall approve or deny an application for a mining permit
20 in writing and shall include the reasons for its decision with clarity and in detail.
21 The department may modify the applicant's proposed mining plan, reclamation plan,
22 or mining waste site feasibility study and plan of operation in order to meet the
23 requirements of this subchapter, and, as modified, approve the application. The
24 approval of the application for a mining permit constitutes the approval of the
25 mining plan, reclamation plan, and waste site feasibility study and plan of operation.

1 In its decision on the application for a mining permit, the department shall include
2 a final decision on compliance with s. 1.11 and the requirements of s. 295.53,
3 discussing all of the following:

4 1. Whether the department has considered the environmental impact
5 statement and comments received on it.

6 2. Whether the department has complied with ss. 1.11 and 295.53.

7 3. Whether, consistent with social, economic, and other essential
8 considerations, the department has adopted all practicable means within its
9 authority to avoid or minimize any harm to the environment and, if not, why not.

10 (2) CRITERIA FOR DENIAL. The department shall deny the mining permit if it
11 finds any of the following:

12 (a) That the site is unsuitable for mining.

13 (b) That the proposed mining may reasonably be expected to create any of the
14 following situations:

15 1. Hazards resulting in irreparable, substantial physical damage to any of the
16 following that cannot be prevented under the requirements of this subchapter,
17 avoided to the extent practicable by removal from the area of hazard, or mitigated
18 by purchase or by obtaining the consent of the owner:

19 a. A dwelling house.

20 b. A public building.

21 c. A school.

22 d. A church.

23 e. A cemetery.

24 f. A commercial or institutional building.

25 g. A public road.

1 2. Irreparable substantial environmental damage to lake or stream bodies
2 despite adherence to the requirements of this subchapter. This subdivision does not
3 apply to an activity that the department has authorized under statute, except that
4 the destruction or filling in of a lake bed may not be authorized unless it is authorized
5 under s. 295.60, 295.605, or 295.61.

6 3. Landslides or substantial deposition from the proposed mining operation in
7 stream or lake beds which cannot feasibly be prevented and which have not been
8 authorized under s. 295.60 or 295.605.

9 (c) That the applicant has violated, and continues to fail to comply with, this
10 subchapter.

11 (d) Subject to sub. (3), that the applicant, principal shareholder of the
12 applicant, or a related person has within 10 years before the application is submitted
13 forfeited a mining reclamation bond that was posted in accordance with a permit or
14 other authorization for a mining operation in the United States, unless the forfeiture
15 was by agreement with the entity for whose benefit the bond was posted and the
16 amount of the bond was sufficient to cover all costs of reclamation.

17 (e) Subject to sub. (3), that the applicant, a related person, or an officer or
18 director of the applicant has, within 10 years before the application is submitted,
19 been convicted of more than one felony for violations of laws for the protection of the
20 natural environment arising out of the operation of a mining site in the United
21 States, unless one of the following applies:

22 1. The person convicted has been pardoned for all of the felonies.

23 2. The person convicted is a related person or an officer or director of the
24 applicant with whom the applicant terminates its relationship.

1 3. The applicant included in its permit application under s. 295.47 a plan to
2 prevent the occurrence in this state of events similar to the events that directly
3 resulted in the convictions.

4 (f) Subject to sub. (3), that the applicant or a related person has, within 10 years
5 before the application is submitted, declared bankruptcy or undergone dissolution
6 that resulted in the failure to reclaim a mining site in the United States in violation
7 of a state or federal law and that failure has not been remedied and is not being
8 remedied.

9 (g) Subject to sub. (3), that, within 10 years before the application is submitted,
10 a mining permit or other authorization for mining issued to the applicant or a related
11 person was permanently revoked because of a failure to reclaim a mining site in the
12 United States in violation of state or federal law and that failure has not been and
13 is not being remedied.

14 **(3) EXCEPTION FROM DENIAL CRITERIA.** The department may not deny a mining
15 permit under sub. (2) (d) to (g) if the person subject to the convictions, forfeiture,
16 permanent revocation, bankruptcy, or dissolution is a related person but the
17 applicant shows that the person was not the parent corporation of the applicant, a
18 person that holds more than a 30 percent ownership in the applicant, or a subsidiary
19 or affiliate of the applicant in which the applicant holds more than a 30 percent
20 interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy,
21 or dissolution.

22 **(4) STATEMENT.** The department shall send a statement as to whether the
23 applicant has satisfied the requirements of this subchapter to the applicant and to
24 the other persons specified in s. 295.57 (4) (b) 1. to 9.

1 (5) DURATION OF APPROVALS. (a) A mining permit is valid for the life of the
2 mining project, subject to the enforcement provisions under s. 295.79.

3 (b) An approval under s. 295.60 or 295.61 remains valid for the life of the
4 mining, subject to the enforcement provisions under s. 295.79.

5 (c) An approval issued for a mining project under ch. 23, 29, 30, 169, 281, 283,
6 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a federal
7 requirement limiting its duration, remains valid for the life of the mining project,
8 subject to the enforcement provisions applicable to the approval.

9 (6) EFFECTIVE DATE OF APPROVALS. A mining permit and any other approval is
10 issued upon mailing and is final and effective upon issuance.

11 (7) MERCHANTABLE BY-PRODUCTS. In a mining permit, the department shall
12 require the operator to treat merchantable by-products as refuse if after 3 years from
13 the time the merchantable by-products result from or are displaced by mining the
14 material has not been transported off the mining site, unless removal is continuing
15 at a rate of more than 12,000 cubic yards per year.

16 (8) GENERAL CONTRACTOR OR AFFILIATE. No operator may engage a general
17 contractor or affiliate to operate a mining site if the general contractor or affiliate has
18 been convicted of more than one felony for violation of a law for the protection of the
19 natural environment arising out of the operation of a mining site in the United States
20 within 10 years before the issuance of the operator's mining permit, unless the
21 general contractor or affiliate receives the department's approval of a plan to prevent
22 the occurrence in this state of events similar to the events that directly resulted in
23 the convictions.

24 **295.59 Bonds and other security.** (1) SECURITY FOR RECLAMATION. (a) Upon
25 notification that an application for a mining permit has been approved by the

1 department but before beginning mining, the operator shall furnish one of the
2 following to the department:

3 1. A bond, furnished by a surety company licensed to do business in this state,
4 conditioned on faithful performance of all of the requirements of this subchapter and
5 all rules adopted by the department under this subchapter.

6 2. Cash.

7 3. Certificates of deposit.

8 4. Government securities.

9 (b) The department shall pay to the operator interest received on certificates
10 of deposit or government securities furnished under par. (a).

11 (c) The operator shall furnish the security required under par. (a) in the amount
12 equal to the estimated cost to the state of fulfilling the reclamation plan, other than
13 the cost of long-term care of the mining waste site, in relation to the portion of the
14 mining site that will be disturbed by the end of the following year. The department
15 shall determine the estimated cost of reclamation of each mining site on the basis of
16 relevant factors, including the character and nature of the lands to be reclaimed, the
17 future suitable use of the land involved, the topography of the mining site, the
18 methods of reclamation being employed, the depth and composition of overburden,
19 and the depth of the ferrous mineral deposit being mined.

20 (2) CERTIFICATE OF INSURANCE. The operator shall submit a certificate of
21 insurance certifying that the applicant has in force a liability insurance policy issued
22 by an insurer authorized to do business in this state or, in lieu of a certificate of
23 insurance, evidence that the applicant has satisfied state or federal self-insurance
24 requirements, covering all mining operations of the operator in this state and
25 affording personal injury and property damage protection in a total amount

1 determined to be adequate by the department but not more than \$1,000,000 and not
2 less than \$50,000.

3 **(2m) PROOF OF FINANCIAL RESPONSIBILITY FOR LONG-TERM CARE OF MINING WASTE**
4 **SITE.** An operator shall maintain proof of financial responsibility ensuring the
5 availability of funds for compliance with the long-term care requirements specified
6 in the waste site feasibility study and plan of operation for a period of 40 years after
7 closing of the mining waste site. The operator shall furnish the proof of financial
8 responsibility to the department in one of the following forms:

9 (a) A bond

10 (b) Cash.

11 (c) Certificates of deposit.

12 (d) Government securities.

13 (e) Insurance.

14 **(3) WRITTEN AUTHORIZATION TO MINE.** Upon approval of the operator's bonds or
15 other security under subs. (1) and (2m), mining application, and certificate of
16 insurance, the department shall issue written authorization to begin mining at the
17 permitted mining site in accordance with the approved mining plan, reclamation
18 plan, and mining waste site feasibility study and plan of operation.

19 **(4) RECLAMATION BOND FOR MORE THAN ONE MINING SITE.** Any operator who
20 obtains mining permits from the department for 2 or more mining sites may elect,
21 at the time that the mining permit for the 2nd or any subsequent mining site is
22 approved, to post a single bond under sub. (1) in lieu of separate bonds for each
23 mining site. An operator who chooses to post a single bond under this subsection
24 shall post a bond in an amount equal to the estimated cost to the state determined
25 under sub. (1) of reclaiming all mining sites the operator has under mining permits.

1 When an operator elects to post a single bond in lieu of separate bonds previously
2 posted on individual mining sites, the department may not release the separate
3 bonds until the department accepts the new bond.

4 (5) REVIEW OF AMOUNTS. If an operator disagrees with the amount of the bonds
5 or other security that the department requires under this section, the operator may
6 seek review under s. 295.77 of the amount required. The operator may post a bond
7 or other security in the amount required by the department and begin mining
8 without forfeiting its right to seek review.

9 **295.60 Impacts to wetlands. (1) DEFINITIONS.** In this section:

10 (b) "Artificial wetland" means a landscape feature where hydrophytic
11 vegetation may be present as a result of human modifications to the landscape or
12 hydrology and for which there is no prior wetland or stream history.

13 (cm) "Ceded territory" means the territory in Wisconsin ceded by the Chippewa
14 Indians to the United States in the treaty of 1837, 7 Stat. 536, and the treaty of 1842,
15 7 Stat. 591.

16 (e) "Federal compensatory mitigation requirement" means any mitigation
17 requirement that is imposed by the federal government.

18 (f) "Federal wetland" means a wetland that is subject to federal jurisdiction
19 under 33 USC 1344.

20 (g) "Functional values and water quality" means the water quality related
21 wetland functional values and uses specified in sub. (6).

22 (h) "Impact" means a permanent, temporary, cumulative, secondary, direct or
23 indirect result that is attributable to a discharge to which the wetland water quality
24 standards apply.

1 (i) "Mitigation" means the restoration, enhancement, or creation of wetlands
2 to offset significant adverse impacts to other wetlands.

3 (j) "Mitigation bank" means a system of accounting for wetland loss and
4 mitigation that includes one or more sites where wetlands are restored, enhanced,
5 or created to provide transferable credits to be subsequently applied to offset
6 significant adverse impacts to other wetlands.

7 (k) "Nonfederal wetland" means a wetland that is not subject to federal
8 jurisdiction under 33 USC 1344.

9 (L) "On-site location" means a location that is within one-half mile of an outer
10 boundary of a mining site.

11 (m) "Practicable" means available and capable of being implemented after
12 taking into consideration cost, available technology, and logistics in light of the
13 overall project purposes and the needs for bulk sampling or a mining operation.

14 (n) "Riparian restoration project" means a project that will restore or enhance
15 the natural beneficial uses and value of a watercourse.

16 (o) "Water basin" means the Lake Michigan basin, the Lake Superior basin, or
17 the Mississippi River basin or other water basin established by the department.

18 (p) "Water management unit" means a subdivision of a water basin that is
19 established on a hydrological basis by the department.

20 (q) "Watershed" means an area of land where all of the water drains into a
21 common waterway.

22 (r) "Wetland water quality standard" means a water quality standard specified
23 under sub. (6).

1 (2) SCOPE. This section applies to any water quality certification, or any other
2 approval that involves an evaluation of impact to wetlands, that is associated with
3 mining or bulk sampling.

4 (3) WETLAND DETERMINATIONS AND DELINEATIONS. For purposes of this section,
5 wetland determinations and wetland boundary delineations shall be consistent with
6 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final
7 regional supplement to the manual. The department may rely on wetland
8 determinations and wetland boundary delineations made by other agencies and
9 consultants. If the applicant for a water quality certification or for any other
10 approval for an activity involving impacts to wetlands has provided information to
11 the department that is identified in the manual or any final regional supplement as
12 being sufficient to make a wetland determination or a delineation of boundaries, the
13 department may visit the site to conduct surveys or gather additional site-specific
14 quantitative data provided that the department does not discontinue the processing
15 of the application to do so.

16 (4) WATER QUALITY CERTIFICATION FOR FEDERAL WETLANDS. (a) For purposes of
17 issuing a water quality certification that is required pursuant to 33 USC 1341 (a) for
18 a discharge associated with a mining operation or bulk sampling into a federal
19 wetland or for issuing any other approval associated with a mining operation for an
20 activity that involves any impact to a federal wetland, the department shall review
21 the federal compensatory mitigation requirements proposed as part of the federal
22 permit application.

23 (b) For purposes of determining whether to issue a water quality certification
24 or other approval that requires an evaluation of impacts to federal wetlands, the
25 department shall determine whether it has reasonable assurance that the federal

1 permitting process and federal compensatory mitigation requirements will offset
2 any significant adverse impact to the functional values and water quality of the
3 federal wetland. If the department determines that reasonable assurance exists, the
4 department may not impose any additional conditions.

5 (c) If the department determines that reasonable assurance does not exist
6 under par. (b), it may impose conditions in the water quality certification or other
7 approval if such conditions are limited to those that are necessary to offset any
8 significant adverse impacts to the federal wetland that are not offset by the federal
9 compensatory mitigation requirements in the federal permit or other approval. Any
10 conditions imposed by the department shall permit a mitigation program as provided
11 in sub. (8).

12 (d) In imposing conditions under par. (c), the department may not increase the
13 number of acres to be mitigated under the federal compensatory mitigation
14 requirements that are applicable to the federal wetland.

15 (e) The department shall issue a water quality certification under this
16 subsection if the federal permitting process, including any federal compensatory
17 mitigation requirement, offsets the significant adverse impacts to the functional
18 values and water quality of the federal wetland.

19 **(5) WATER QUALITY CERTIFICATION FOR NONFEDERAL WETLANDS.** (a) *Certification*
20 *required.* No person may discharge dredge or fill material associated with a mining
21 operation or bulk sampling into a nonfederal wetland unless the discharge is
22 authorized under a water quality certification issued under this section.

23 (b) *Avoidance or minimization of impacts.* For purposes of issuing a water
24 quality certification for a discharge subject to par. (a) or evaluating impacts to
25 nonfederal wetlands for any approval requiring an evaluation of impacts to

1 nonfederal wetlands, the department shall first determine whether any impact to
2 the nonfederal wetland caused by the mining operation or bulk sampling can be
3 avoided or minimized to the extent practicable. If the impacts have been avoided or
4 minimized to the extent practicable, any remaining impacts to nonfederal wetlands
5 may not be a basis for a denial of a water quality certification provided that any
6 remaining significant adverse impacts are offset under a mitigation program under
7 sub. (8).

8 (c) *Siting analysis.* 1. An applicant for a water quality certification for a
9 nonfederal wetland shall submit a siting analysis to the department for review. In
10 reviewing the siting analysis, the department shall recognize all of the following:

11 a. The limitations associated with the proposed location of the ferrous mineral
12 deposits to be mined or associated with bulk sampling.

13 b. The need for the mining waste sites and any processing facilities to be
14 contiguous to the location of the ferrous mineral deposits to be mined.

15 c. The presumption that nonfederal wetlands will be impacted.

16 2. The siting analysis shall be limited to an analysis of alternative
17 configurations associated with the areas of the proposed ferrous mineral deposits to
18 be mined at the mining site and with the areas that are contiguous to those deposits.

19 3. If it is impracticable to avoid an impact to, or the use of, a nonfederal wetland,
20 the applicant shall identify in the siting analysis, and the department shall review,
21 those configurations that would result in impacts to the fewest acres of nonfederal
22 wetlands to the extent practicable. The department shall determine which
23 configuration will minimize the impacts to the fewest acres.

1 4. After the department makes the determination under subd. 3., the
2 department shall evaluate the impact of the mining operation to the functional
3 values and water quality of the nonfederal wetland.

4 **(5m) EVALUATION OF IMPACTS.** The department shall determine the impact of a
5 proposed activity upon the functional values and water quality of a wetland by using
6 wetland ecological evaluation methods jointly accepted by the U.S. Army Corps of
7 Engineers and the department and appropriate to the affected wetland.

8 **(6) WETLAND WATER QUALITY STANDARDS.** The following wetland water quality
9 standards shall apply to any water quality certification under sub. (4) or (5):

10 (a) Adverse impacts to the functional values and water quality of wetlands and
11 adverse impacts to other waters of the state that are influenced by wetlands shall be
12 minimized, and any significant adverse impacts remaining after minimization shall
13 be subject to a mitigation program under sub. (8). For purposes of this section,
14 functional values and uses consist of all of the following:

15 1. Storm and flood water storage and retention and the moderation of water
16 level fluctuation extremes.

17 2. Hydrologic functions including the maintenance of dry season streamflow,
18 the discharge of groundwater to a wetland, the recharge of groundwater from a
19 wetland to another area, and the flow of groundwater through a wetland.

20 3. Filtration or storage of sediments, nutrients, or toxic substances that would
21 otherwise adversely impact the quality of waters of the state.

22 4. Shoreline protection against erosion through the dissipation of wave energy
23 and water velocity and anchoring of sediments.

24 5. Habitat for aquatic organisms in the food web including fish, crustaceans,
25 mollusks, insects, annelids, and planktonic organisms and the plants and animals

1 upon which these aquatic organisms feed and depend upon for their needs in all life
2 stages.

3 6. Habitat for resident and transient wildlife species, including mammals,
4 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel
5 corridors, and food.

6 7. Recreational, cultural, educational, scientific, and natural scenic beauty
7 values and uses.

8 (b) All of the following shall be minimized in order to avoid significant adverse
9 impacts for the purpose of maintaining or enhancing the functional values and water
10 quality identified under par. (a), and any minimization of the following must be taken
11 into account in the department's evaluation of significant adverse impacts:

- 12 1. The use of liquids, fill, or other solids or gases.
- 13 2. The presence of floating or submerged debris, oil, or other material.
- 14 3. The use of materials producing color, odor, taste, or unsightliness.
- 15 4. The presence of concentrations or combinations of substances that are toxic
16 or harmful to human, animal, or plant life.
- 17 5. Adverse effects on hydrological conditions necessary to support the biological
18 and physical characteristics that are naturally present in wetlands. For purposes
19 of this subdivision, the hydrological conditions include of all of the following:
 - 20 a. Water currents and erosion and sedimentation patterns.
 - 21 b. Water temperature variations.
 - 22 c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
 - 23 d. The movement of aquatic fauna.
 - 24 e. The pH of the wetland.
 - 25 f. Water levels or elevations.

1 6. Adverse effects on existing habitat and populations of animals and
2 vegetation found in wetlands.

3 **(6m) SCOPE OF EVALUATION.** For purposes of issuing a water quality certification
4 under sub. (4) or (5), the department shall evaluate whether an activity will result
5 in a significant adverse impact to the functional values and water quality associated
6 with a wetland by doing all of the following:

7 (a) Comparing the functional values and water quality of the wetland with
8 other wetlands located within the boundaries of the mining site or within the same
9 water management unit as the mining site and with other waters of the state that
10 are located in the same water management unit.

11 (b) Taking into consideration the floristic province in which the mining site is
12 located.

13 **(7) APPROVAL BY DEPARTMENT; NONFEDERAL WETLANDS.** The department shall
14 issue a water quality certification under this section for a nonfederal wetland, if the
15 department determines all of the following:

16 (a) All practicable measures will be taken to minimize the adverse impacts to
17 wetlands.

18 (b) Any significant adverse impacts to functional values and water quality that
19 remain are offset through a mitigation program under sub. (8).

20 **(8) MITIGATION PROGRAM.** (a) *Contents.* A mitigation program to offset
21 significant adverse impacts to functional values and water quality of wetlands shall
22 contain all of the following:

23 1. Proposed projects for mitigation and a schedule for implementing the
24 projects. These projects may be performed by a person other than the applicant,
25 subject to the department's approval of the projects and schedule.

1 2. If the program is applicable to a federal wetland, all federal compensatory
2 mitigation requirements associated with the federal wetland application.

3 (b) *Option of applicant.* An applicant submitting a program under par. (a) may
4 submit options for mitigation. These options may include any combination of the
5 types of mitigation specified in par. (d). In preparing the program, the applicant shall
6 identify and consider mitigation that could be conducted within the same watershed
7 in which the mining site is located.

8 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed
9 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of
10 credits in a mitigation bank, each acre that is subject to mitigation shall count as at
11 least one credit.

12 (d) *Sequence.* If it is not practicable or ecologically preferable to conduct
13 mitigation at an on-site location or if there is no on-site location that will provide
14 sufficient wetland acreage, the department shall allow the applicant to conduct
15 mitigation at a site other than an on-site location, subject to par. (e). Mitigation
16 under a program under par. (a) shall be accomplished through the following types:

17 1. Implementation of a project for mitigation.

18 2. Purchase of mitigation credits from a mitigation bank for a site in a
19 mitigation bank that is located anywhere in the state subject to par. (e).

20 3. Purchase of mitigation credits from a mitigation bank established prior to
21 February 1, 2002, if the department determines that the bank sponsor is in
22 compliance with any applicable memorandum of understanding between the bank
23 sponsor and the department.

24 4. Participation in the in lieu fee subprogram, if such a subprogram is
25 established under s. 281.36 (3r) (e).

1 (e) If a mining operation is located in whole or in part within the ceded territory,
2 any mitigation including mitigation accomplished through the purchase of
3 mitigation bank credits and the in-lieu fee subprogram that is authorized or
4 required by the department shall occur within the ceded territory.

5 (9) MINING PERMIT. Any water quality certification issued by the department,
6 including all of the conditions imposed as part of the certification, shall be included
7 in the mining permit.

8 (10) CONSERVATION EASEMENTS. (a) A person who is the holder of a water quality
9 certification that authorizes mitigation to be implemented by the holder of the
10 certification at an on-site location shall grant a conservation easement under s.
11 700.40 to the department to ensure that the wetland that is subject to the mitigation
12 will not be destroyed or substantially degraded by any subsequent proprietor or
13 holder of interest in the property on which the wetland is located. The department
14 shall suspend the mining permit if the holder of the permit fails to grant the
15 easement within the time limit set forth in the mining permit. If the holder
16 subsequently grants the conservation easement to the department, the department
17 shall reinstate the mining permit.

18 (b) Notwithstanding par. (a), the department shall modify or release a
19 conservation easement granted under par. (a) if all of the following apply:

20 1. The department determines that part or all of the wetland subject to the
21 mitigation ceases to be a wetland.

22 2. The person who is required to grant the conservation easement did not
23 contribute to the loss of the wetland as specified in subd. 1.

1 3. Any subsequent proprietor of or holder of interest in the property on which
2 the wetland specified in subd. 1. is located did not contribute to the loss of the
3 wetland.

4 **(11) EXEMPTIONS.** (a) *Artificial wetlands.* All of the following artificial wetlands
5 that are associated with a mining operation are exempt from the water quality
6 certification provisions and mitigation provisions under this section and under any
7 other statute or rule relating to impacts on wetlands:

8 1. An artificial wetland that is a sedimentation or stormwater detention basin
9 or associated conveyance feature operated and maintained only for sediment
10 detention and flood storage purposes.

11 2. An artificial wetland that is an active sewage lagoon, cooling pond, waste
12 disposal pit, fish rearing pond, or landscape pond.

13 3. An artificial wetland that is actively maintained farm drainage and roadside
14 ditches.

15 4. An artificial wetland as part of an active mining operation.

16 (c) *Other exempted activities.* For nonfederal wetlands, all of the following
17 activities that are associated with a mining operation or bulk sampling are exempt
18 from the water quality provisions and mitigation provisions under this section and
19 any other law relating to impact on wetlands if the applicant minimizes any adverse
20 effect on the environment as a result of the activities:

21 1. Maintenance, emergency repair, or reconstruction of damaged parts of
22 structures that are in use in a wetland.

23 2. Construction or maintenance of irrigation or drainage ditches.

1 3. Construction or maintenance of farm roads, forest roads, or temporary
2 mining roads that is performed in accordance with best management practices, as
3 determined by the department.

4 **(12) RELATIONSHIP TO OTHER LAWS.** None of the following apply to a mining
5 operation or bulk sampling:

6 (a) Section 281.36, except as otherwise specifically provided in this section.

7 (b) Any rule promulgated by the department relating to wetlands that conflicts
8 with this section, except that no rule promulgated by the department under s. 281.36
9 applies to a mining operation or bulk sampling.

10 **295.605 Impacts to navigable waters. (1) DEFINITION.** In this section,
11 “navigable water activity” means an activity for which a permit or contract is
12 required under s. 30.12, 30.123, 30.19, 30.195, or 30.20.

13 **(2) PERMIT OR CONTRACT REQUIRED.** No person may engage in any navigable
14 water activity associated with bulk sampling or mining unless the person has been
15 issued a permit or entered into a contract as provided under sub. (4).

16 **(3) APPLICATION; RIPARIAN STATUS.** (a) Any person who intends to engage in a
17 navigable water activity associated with bulk sampling or mining need not be a
18 riparian owner to do any of the following:

19 1. Apply for and be issued an individual permit for a navigable water activity
20 under s. 30.12, 30.123, 30.19, or 30.195.

21 1m. Enter into a contract under s. 30.20.

22 2. Engage in an activity that is exempt under s. 30.12, 30.123, 30.19, 30.195,
23 or 30.20.

24 3. Seek authorization under a general permit issued under s. 30.12, 30.123,
25 30.19, or 30.20.